DATE: 17 December 2021

(1) MEDWAY COUNCIL

and

(2) KEVIN DENNIS ATTWOOD, MICHAEL CHRISTOPHER ATTWOOD & MATTHEW JAMES ATTWOOD

and

(3) BARCLAYS SECURITY TRUSTEE LIMITED

AGREEMENT
Town and Country Planning Act 1990
Section 106

Land at East Hill, Chatham, Kent

Bhupinder Gill
Assistant Director Legal and Governance
Medway Council
Gun Wharf
Dock Road
Chatham
ME4 4TR

LPA reference: MC/19/0765
PINS reference: APP/A2280/W/21/3280915

THIS DEED is made the 17th day of December 2021

1 **PARTIES**

1.1 **MEDWAY COUNCIL** ("the Council") whose address is Gun Wharf Dock Road Chatham ME4 4TR

1.2 **KEVIN DENNIS ATTWOOD** whose address is Down Court Farm, Down Court Road, Doddington, Sittingbourne, Kent, ME9 0AT **MICHAEL CHRISTOPHER ATTWOOD** whose address is New Barn, Silver Lane, Bishopstone, Seaford, BN25 2FA **and MATTHEW JAMES ATTWOOD**, whose address is Temple Lodge, Lady Margaret Manor Road, Doddington Sittingbourne Kent ME9 0NX (together known as "the Owner")

1.3 **BARCLAYS SECURITY TRUSTEE LIMITED** (company registration number 10825314) whose registered office is at 1 Churchill Place, London, E14 5HP ("the Lender")

together ("the Parties")

2 **DEFINITIONS AND INTERPRETATION**

2.1 In this Deed the following words and phrases shall have the following meanings:

"Affordable Housing"	means Housing Units including Social Rented/Affordable Rented Housing and Shared Ownership Accommodation which are provided to meet the needs of eligible households whose needs are not met by the market;
"the Affordable Housing Land"	means those parts of the Site as identified on the Approved Affordable Housing Plan on which the Affordable Housing Units associated garden areas and parking spaces are to be provided;
"Affordable Housing Plan"	means an outline plan and scheme relating to the provision of the Affordable Housing Units within the Development, prepared on the assumption that the Permission is fully implemented. The plan will include: (i) The number of Affordable Housing Units that are expected to be provided within the Development (being not less than 25% of the total number of Housing Units or if such percentage does not result in a whole number of Affordable Housing Units then the number shall be rounded up to the nearest whole number) (ii) The expected location of the Affordable Housing Units within the Site (iii) The expected size (number of bedrooms) of each Affordable Housing Unit

(iv) Indicative floor plans and a schedule of floor areas for the Affordable Housing Units

(v) The expected location of those Affordable Housing Units which are to be built to the Lifetime Homes Standards

(vi) The expected location of those Affordable Housing Units which are to be built to be Wheelchair Accessible Housing standard

(vii) The number of car parking spaces gardens and balconies available for the Affordable Housing Units

"the Affordable Housing Price" means the sum payable to the Owner by the Registered Provider for the Affordable Housing Land which sum shall be calculated as follows:

a) The transfer or lease of the Affordable Housing Land at nil cost; or

b) The Owner having at its own cost:

i. remediated the Affordable Housing Land in accordance with all necessary consents and statutory requirements so that the land is suitable for its intended use

ii. cleared and levelled the Affordable Housing Land

iii. provided the Affordable Housing Land with all necessary service media for gas telecommunications water foul and surface water drainage highways and electricity to render the said land for use (once developed) for residential purposes and without requiring plant or equipment to provide services; or

c) the Registered Provider paying for the construction and all associated costs of any Affordable Housing Units which are constructed on the Affordable Housing Land; or

d) any other reasonable sum as agreed by the Owner and the Registered Provider;

"Affordable Housing Units" means a minimum of 25% of the Housing Units to be constructed on the Affordable Housing Land as Affordable Housing which shall be more particularly detailed in the Approved Affordable Housing Plan (and if this does not result in a whole number then the number shall be rounded up);

"Affordable Rented Housing" means rented housing provided by the Registered Provider to households who are eligible for Affordable Housing which shall be subject to rent control of no more than 80% of the market rent

"the Application Site" means the land edged in blue on Plan 3;

"Appeal"	means planning appeal submitted by the Owner to the Secretary of State under reference number APP/A2280/W/21/3280915 against the Council's refusal of the Planning Application
"the Approved Affordable Housing Plan"	means the Affordable Housing Plan for the Development approved pursuant to paragraph 1 of the Second Schedule subject to any amendments which may subsequently be approved by the Council subject to paragraph 3 of the Second Schedule;
"the Bird Habitat Land"	means the land of 9.9 hectares the approximate location of which is shown edged green on Plan 7
"the Bird Habitat Management and Maintenance Plan"	means the management and maintenance plan for the laying out planting management and maintenance of the Bird Habitat Land approved by the Council pursuant to paragraph 1 of Fourth Schedule or such variation to such plan agreed by the Council;
"the Chalk Grassland Land"	the land of 1.41 hectares the approximate location of which is shown edged green on Plan 6
"the Chalk Grassland Management and Maintenance Plan"	means the management and maintenance plan for the management and maintenance of the Chalk Grassland Land approved by the Council pursuant to paragraph 1 of Fifth Schedule or such variation to such plan agreed by the Council;
"the Council's Costs"	means the Council's proper and reasonable costs (with no VAT being payable) in the preparation execution and registration of this Deed;
"Commencement Date"	means the date on which the Commencement of the Development occurs;
"Commencement of the Development"	means commencement of the Development on the Site by the carrying out of a material operation within the meaning of S56 (4) of the Planning Act but for the purpose of this definition the carrying out of any works of demolition, works of site clearance, ground investigation and site survey works, construction of boundary fencing or hoardings, construction of temporary accesses and/or highway works, archaeological investigation, site decontamination or remediation works landscaping works, laying of sewers and other services creation of site compounds and noise attenuation works shall not be deemed to be the carrying out of a material operation and "Commence Development" shall be construed accordingly;
"the Contribution/s"	means the financial contributions set out in the First Schedule;

Cripps Pemberton Greenish
on behalf of all the parties.

"the Development"	means the development of the Site and the adjoining land within the Application Site by construction of up to 800 dwellings, primary school, supporting retail space of up to 150 square metres* with associated road link between North Dane Way and Pear Tree Lane and other road infrastructure, open space and landscaping as in accordance with the Permission
"the Disputes Resolution Procedure"	means the procedure referred to in clause 7.9 and set out in the Eighth Schedule hereto;
"First Fix Level"	means all the work needed to take a building from foundation to putting plaster on the internal walls. This includes constructing walls, floors and ceilings and inserting cables and pipes necessary for utilities;
"Green Infrastructure"	means that part of the Development used for any or all of the following, namely youth and adult playing space, casual/informal children's playing space, equipped children's play space natural and semi natural open space, green corridors, landscaped buffers and recreational paths, together with a sustainable drainage system for surface water run off comprising all treatment and drainage systems the components of which may include any headwalls, pipework, permeable paving, swales, reed beds, ponds, filter trenches, attenuation tanks, detention basins and wet ponds to be approved by a Reserved Matters Approval and to be provided in the locations as approved by a Reserved Matters Approval;
"Green Infrastructure Scheme/s"	means a scheme for a particular Phase which shall accord with the approved Phasing Plan and include: (a) plans identifying the location, size and nature of each proposed area of Green Infrastructure within that Phase as approved by Reserved Matters Approval; (b) a description and plans of the proposed works, equipment, layout etc. of any play space within the relevant Phase; (c) details of landscaping and planting; (d) details of earthworks, excavations, construction, drainage, fencing, materials, installations, surfacing and signage; (e) a programme for the provision of the Green Infrastructure in that Phase; and (f) a strategy and management plan for securing the long term future maintenance and management of the Green Infrastructure within that Phase;

* and community facility or nursery facility

"Housing Unit"	means a residential dwelling (including any flat) erected on the Site pursuant to the Permission and shall include an Affordable Housing Unit; and "**Housing Units**" shall be construed accordingly;
"HRA 2008"	means the Housing and Regeneration Act 2008;
"Indexation"	means the increase of any sum in accordance with the formula set out in clause 7.11;
"the Inflation Index"	means the "all items" index figure of the Index of Retail Prices published by the Office for National Statistics or such other index as the Council may reasonably nominate in the event that the Index of Retail Prices shall no longer be published or its name or methodology be materially altered;
"the Legal Charge"	means the legal charge of freehold titles K705294 and K756406 dated 28 May 2021;
"the Legal Charge Land"	means the part of the Site the Bird Habitat Land and Chalk Grassland Land shown shaded green on Plan 4;
"Lifetime Homes Standards"	means homes built to meet Building Regulations M4(2) category 2: Accessible and adaptable housing;
"Managed Land"	means the Green Infrastructure (but excluding any areas which have been or are to be adopted by the relevant highways or drainage authorities pursuant to an adoption agreement);
"Management Company Structure Scheme"	means a scheme that addresses the following in relation to the Management Company: (a) details of the proposed constitution of the Management Company which shall be a private company limited by shares or guarantee; (b) proposed banking arrangements for the Management Company; (c) details of and arrangements for maintenance of such insurances as shall be appropriate in respect of the use of any Managed Land managed by the Management Company in circumstances where the Management Company is in breach of its obligations under this Deed (including step in rights for the Council (if it so elects) or its nominee, how that mechanism may be exercised and details of settlement and transfer of any estate charges and payments to the Council/its nominee);

"Management Company"	means: a) a body established by the Owner to carry out the long term management and maintenance of any Managed Land to be managed by it in accordance with the provisions of this Deed and whose objectives shall include: i. managing the maintenance of the Managed Land; ii. setting the level of charges for funding the running of the Management Company and collecting such charges; iii. ensuring that the level of any charges levied against any Affordable Housing Units shall not materially affect the ability of those Housing Units to remain Affordable Housing but this will not prevent charges being levied at all, nor a full charge being levied if those Housing Units cease to be Affordable Housing Units; and iv. ensuring accountability to occupiers of the Housing Units; and this includes any/all subsequent body/bodies that take on this responsibility ;
"Monitoring Officer Costs"	means the sum of sixteen thousand two hundred pounds (£16,200) being the agreed contribution on the Council's proper and reasonable costs in monitoring compliance with the obligations and requirements contained in this Deed to be paid in accordance with clause 6.1.5;
"Nominations Agreement"	means the agreement between the Council and the Registered Provider by which the occupation of the Affordable Housing Units is approved by the Council which shall be in a form approved by the Council such approval not to be unreasonably withheld or delayed;
"Notice"	means a notice in the form which is attached to this Deed at Annex 1;
"Occupation"	means physical occupation for the intended beneficial purpose but does not include occupation for the purposes of construction fitting-out decoration landscaping marketing sales security or management of any part of the Development and for the avoidance of doubt in the case of a sale of a freehold or a long leasehold interest to a third party Occupation commences on the date of legal completion of the sale rather than exchange of contracts and "Occupy" "Occupier" "Occupiers" and "Occupied" shall be construed accordingly;
"the Permission"	means the outline planning permission issued pursuant to the Appeal;

"Phase"	means a part of the Development identified as a construction phase of the Development in the Phasing Plan approved by the Council and "**Phasing**" shall be construed accordingly;
"Phasing Plan"	means a plan to be submitted to and approved by the Council identifying the number, location, extent and programming of construction phases of the Development of the whole Site and showing the number of Housing Units to be provided in each Phase;
"Plan 1"	means the plan annexed to this Deed titled "Plan 1";
"Plan 2"	means the plan annexed to this Deed titled "Plan 2";
"Plan 3"	means the plan annexed to this Deed titled "Plan 3";
"Plan 4"	means the plan annexed to this Deed titled "Plan 4";
"Plan 5"	means the plan annexed to this Deed titled "Plan 5";
"Plan 6"	means the plan annexed to this Deed titled "Plan 6";
"Plan 7"	means the plan annexed to this Deed titled "Plan 7";
"the Planning Act"	means the Town and Country Planning Act 1990 as amended;
"the Planning Application"	means the application for outline planning permission to carry out the Development on the Site and the adjoining land within the Application Site and given reference MC/19/0765;
"Private Housing Units"	means the Housing Units forming part of the Development but excluding the Affordable Housing Units;
"Registered Provider"	means any body or company accredited by Homes England or any person or body or entity which is registered as a provider of social housing in accordance with section 80(2) and chapter 3 of the HRA 2008;
"Reserved Matters Approval"	means an approval or approvals to reserved matters pursuant to a reserved matters application/s;
"School"	means a primary school providing state education for primary aged children including a locally authority controlled school, academy and free school together with nursery school provision;

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and planning consultants

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PROJECT
Capstone Medway : master planning

CLIENT — DATE
FD Attwood and Partners — 08/11/2021

DRAWING TITLE — DRN + CKD
Plan 1 — LS LG

ISSUE STATUS — SCALE
PLANNING DRAWING — 1:10000 @ A3

DRAWING NUMBER — REVISION
08284a-A-L-(91)-001 — 1st

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PROJECT
Capstone Medway : master planning

CLIENT — DATE
FD Attwood and Partners — 08/11/2021

DRAWING TITLE — DRN + CKD
Plan 2 — LS LG

ISSUE STATUS — SCALE
PLANNING DRAWING — 1:10000 @ A3

DRAWING NUMBER — REVISION
08284a–A–L–(91)–002 — 1st

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DEVON CLOSE
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RAINSPRING CLOSE
RHARSTEAD ROAD
Path (MPI)
Wildash Wood
Capstone household waste and recycling centre
Capstone Farm
Country Park
NORTH DANE WAY
Path (MPI)
Bridleway

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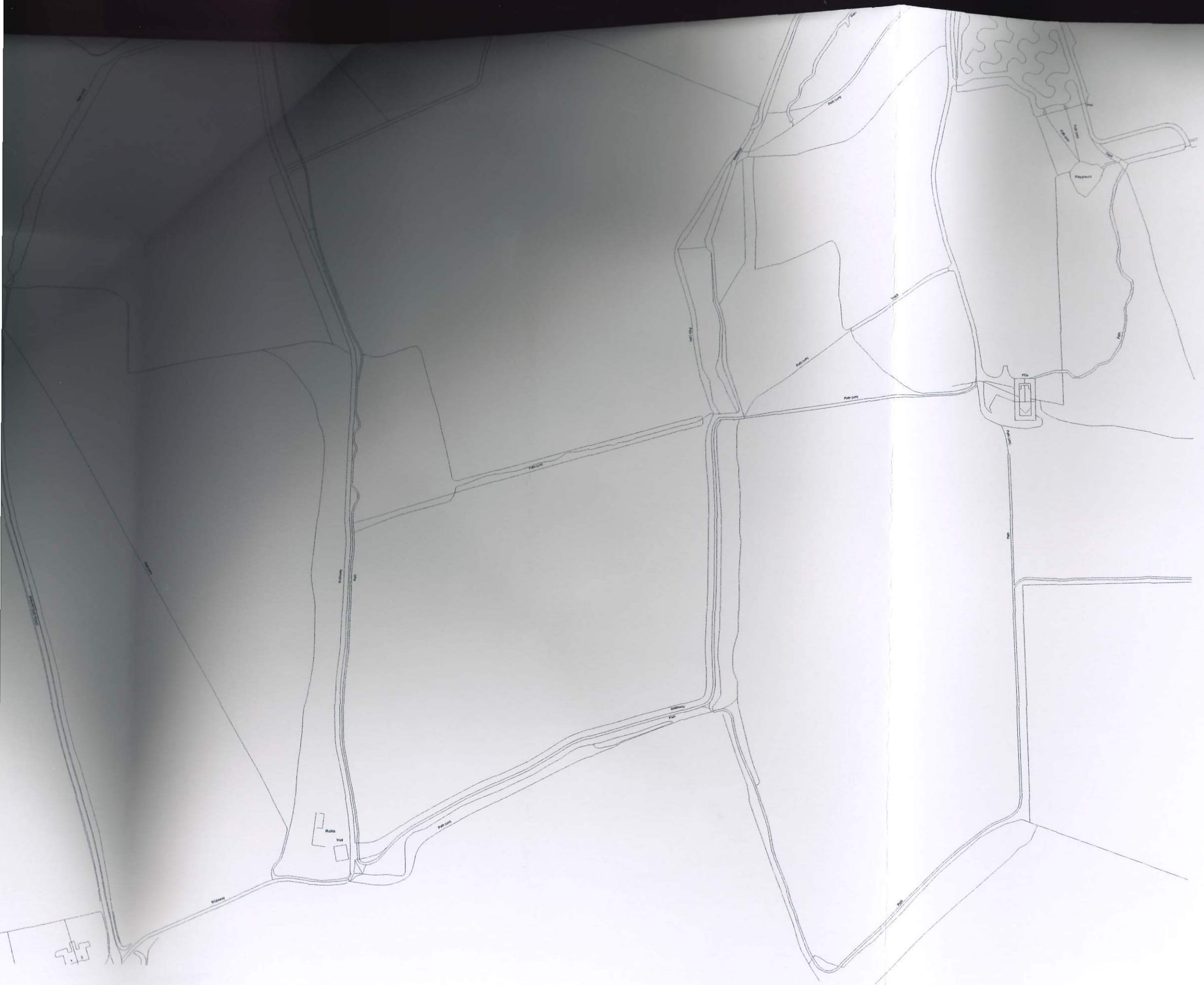
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REV.	DATE	DRN.	CKD.	NOTES
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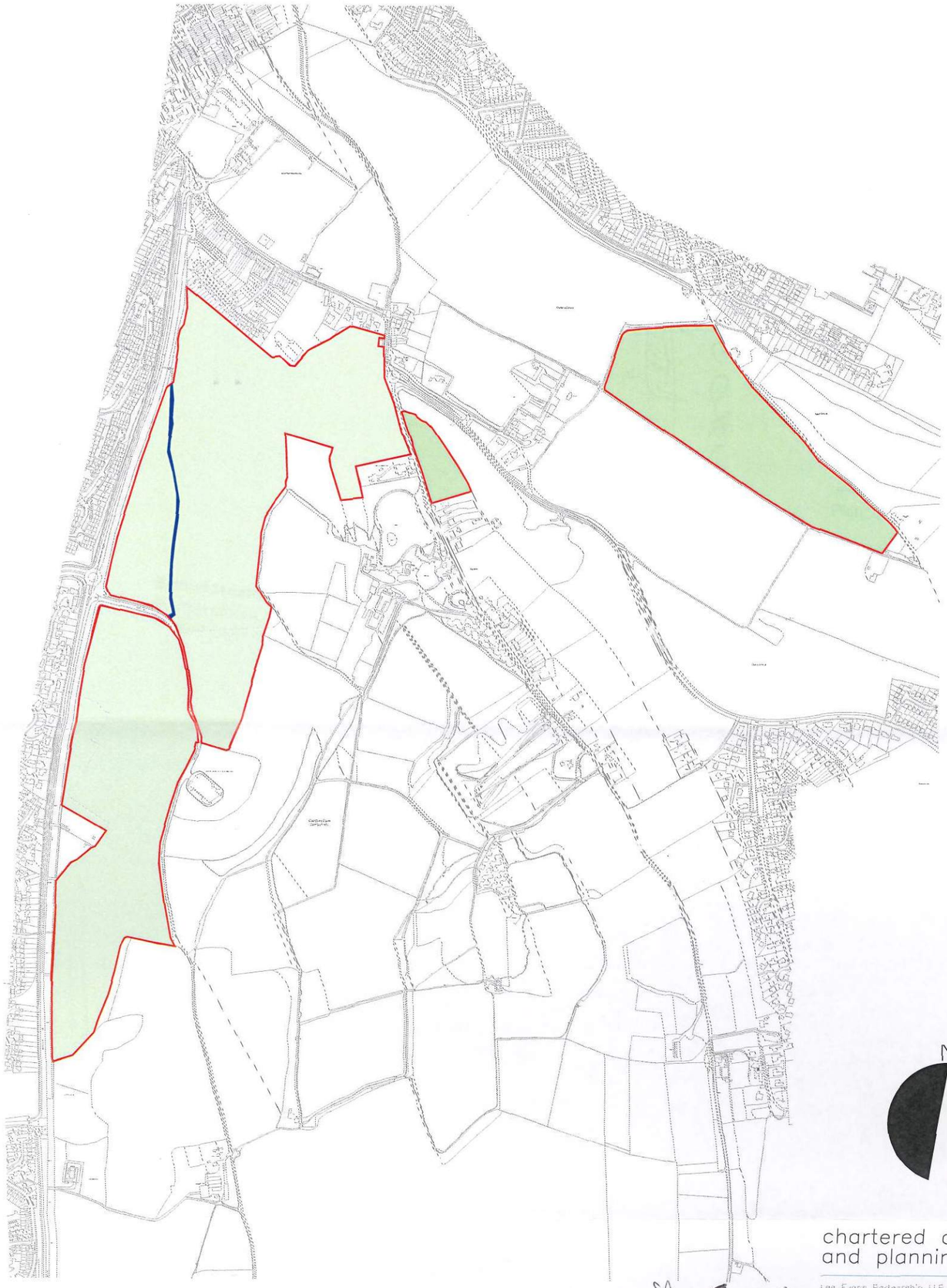

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chartered architects
and planning consultants

Lee Evans Partnership LLP,
Canterbury: St Johns Lane, Canterbury, Kent CT1 2QS Tel: 01227 784444
London: 31-35 Kirby Street, London EC1N 8TE Tel: 0207 492 1744
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PROJECT
Capstone Medway : master planning

CLIENT — DATE
FD Attwood and Partners — 09/11/2021

DRAWING TITLE — DRN + CKD
Plan 4 — LS LG

ISSUE STATUS — SCALE
PLANNING DRAWING — 1:10000 @ A3

DRAWING NUMBER — REVISION
08284a-A-L-(91)-004 — PL13

Barclays Security Trustee Limited
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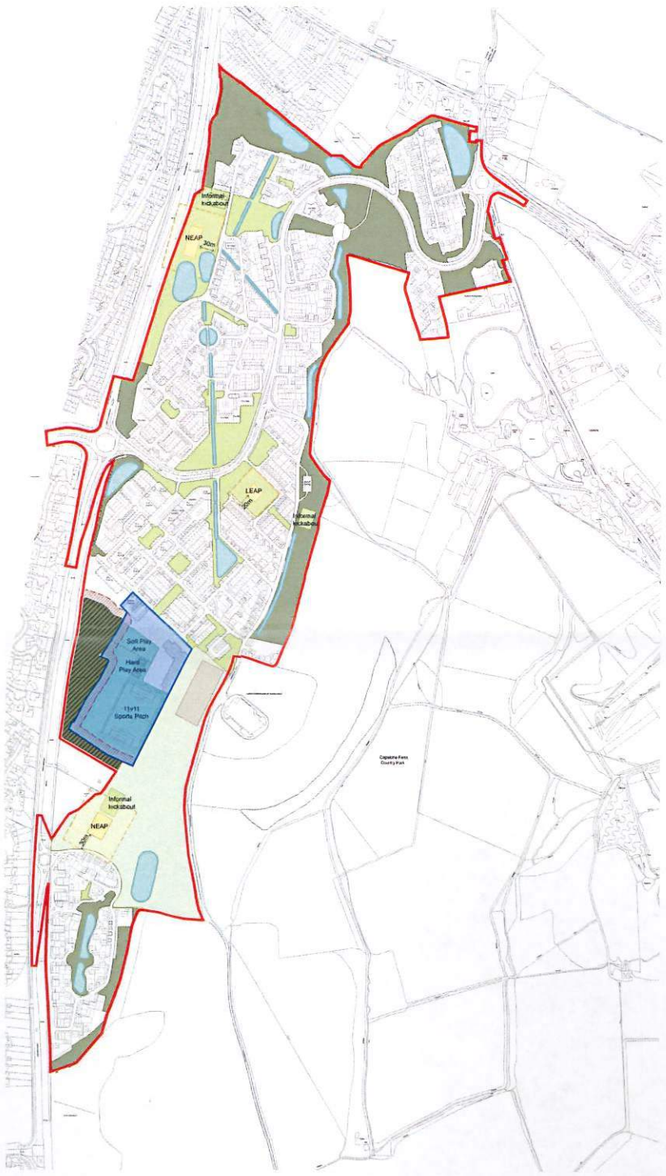

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PROJECT
Capstone Medway : master planning

CLIENT — DATE
FD Attwood and Partners — 09/11/2021

DRAWING TITLE — DRN + CKD
Plan 5 — LS LG

ISSUE STATUS — SCALE
PLANNING DRAWING — 1:10000 @ A3

DRAWING NUMBER — REVISION
08284a-A-L-(90)-005 — 1st

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PROJECT
Capstone Medway : master planning

CLIENT — DATE
FD Attwood and Partners — 08/11/2021

DRAWING TITLE — DRN + CKD
Plan 6 — LS LG

ISSUE STATUS — SCALE
PLANNING DRAWING — 1:10000 @ A3

DRAWING NUMBER — REVISION
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PROJECT
Capstone Medway : master planning

CLIENT — DATE
FD Attwood and Partners — 08/11/2021

DRAWING TITLE — DRN + CKD
Plan 7 — LS LG

ISSUE STATUS — SCALE
PLANNING DRAWING — 1:10000 @ A3

DRAWING NUMBER — REVISION
08284a-A-L-(91)-007 — 1st

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Snowhill Queensway Birmingham, B2 2XE

"School Land"	means a minimum of 3 hectares of land within the Site the approximate position of which is shown edged blue on Plan 5 but the precise location of which shall be approved pursuant to a reserved matters application fixing the location of the School Land;
"the School Notice (Council)"	means a written notice served by the Council on the Owner stating whether or not it requires the Owner to transfer the School Land to the Council as specified in the written notice
"the School Notice (Number)"	means a written notice served by the Owner on the Council stating the number of Housing Units Occupied at the date the School Notice (Council) was served on the Owner
"the School Notice (Owner)"	means a written notice served by the Owner on the Council stating the date of first Occupation of the first Housing Unit to be Occupied
"the Secretary of State"	means the Secretary of State for Levelling Up, Housing and Communities or other minister or other authority for the time being having or entitled to exercise the powers conferred on the Secretary of State for Levelling Up, Housing and Communities by the Planning Act;
"Section 73 Consent"	means a planning permission issued pursuant to an application to vary the Permission made under section 73 of the Planning Act;
"Serviced"	means the provision of vehicular and pedestrian access gas water electricity telephone and foul drainage to the boundary of the relevant land in order that the users of the relevant land can connect into these services and "Service" shall be construed accordingly;
"Shared Ownership Accommodation"	means Housing Units within the Development which are occupied by persons under shared ownership arrangements as defined by Section 70 (4) of the HRA 2008 where those persons have the opportunity to purchase all or substantially all the equity in the Housing Units at a later date or such other equity sharing or retention terms from time to time approved by the Council;
"the Site"	means the land known as East Hill, Chatham, Kent and more particularly delineated edged red on Plan 1;

"Social Rent"	means Affordable Housing Units within the Development which are available to rent from a Registered Provider on an assured or assured shorthold tenancy at no more than the Homes England's target rent and "Social Rented Housing" shall be construed accordingly;
"Statutory Undertaker"	has the meaning given such term in the Planning Act and for the avoidance of doubt, shall include any public gas transporter water or sewerage undertaker electricity supplier or public telecommunications operator;
"Specified Terms"	means the transfer of the Managed Land: (a) with vacant possession but with the benefit of rights of way, easements and rights of drainage, utilities or access enjoyed or to be enjoyed by the transferred land and sufficient to permit full and beneficial use and enjoyment of it following the construction of the Development or Phase and subject only to rights which do not interfere with the use of the transferred land's purpose; and (b) subject to any other reasonable terms required by the transferee and transferor.
"Strategic Access Management and Monitoring Strategy (SAMMS)"	means the strategy of the North Kent Environmental Planning Group to resolve the impact of additional disturbance to wintering and migrating birds in the North Kent Special Protection Area (SPA) and Ramsar sites caused by new development within 6km of either the SPA or a Ramsar site
"*Trigger Date*"	*means each date upon which an event occurs that* triggers the payment of any Contribution by the Owner the owner of the Bird Habitat Land or the owner of the Chalk Grassland Land and/or the coming into effect of any other obligation under this Deed;
"Wheelchair Accessible Housing"	means homes built to meet Building Regulations M4(3) category 3: Wheelchair user dwelling.
"Working Day/s"	means any day from Monday to Friday inclusive which is not Christmas Day Good Friday a statutory bank holiday or a day between Christmas and New Year's Day.

2.2 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council to the body or bodies (as appropriate) having statutory responsibility for the relevant function in replacement for the Council

2.3 In the absence of any contrary provision any reference to a statute shall include any statutory extension modification or re-enactment of it and any statutory

instrument direction order regulation or byelaw made or issued under the statute or deriving validity from it

2.4 Words importing the masculine gender shall include the feminine gender and the neuter and vice versa

2.5 Words importing persons include companies, partnerships and corporations and vice versa

2.6 Unless the context otherwise requires words importing the singular shall include the plural and vice versa

2.7 Headings are for ease of reference only and shall not be construed as part of this Deed

2.8 Reference to any recital clause schedule or paragraph or any part thereof shall unless the context otherwise requires be reference to any recital clause schedule or paragraph or any part thereof in this Deed

2.9 Wherever there is more than one person named as a party or where more than one party undertakes an obligation all their obligations shall be enforceable against all of them jointly and or against each individually

2.10 Any covenant by a party to this Deed not to do an act or thing shall be deemed to include an obligation not to permit or knowingly suffer such act or thing to be done by any other person

3 RECITALS

3.1 The Council is the Local Planning Authority for the purpose of the Planning Act and the Local Education Authority for the purpose of the Education Act 1996 and the Highway Authority for the purpose of the Highways Act 1980 for the area in which the Site the Bird Habitat Land and the Chalk Grassland Land is situated

3.2 The Owner is the freehold owner of the Site and is registered as registered proprietor with title absolute of it at the Land Registry under title numbers K705294 (part), K756406 and TT78686

3.3 The Owner is the freehold owner of the Bird Habitat Land and is registered as registered proprietor with title absolute of it at the Land Registry under title numbers K705294 (part)

3.4 The Owner is the freehold owner of the Chalk Grassland Land and is registered as registered proprietor with title absolute of it at the Land Registry under title numbers K705294 (part)

3.5 The Lender is the owner of the Legal Charge

3.6 The Owner hereby declares that as at the date hereof no other person holds a legal interest in the Site the Bird Habitat Land or the Chalk Grassland Land registered under titles K705294 (part), K756406 and TT78686

3.7 The Planning Application has been submitted to the Council in relation to the Development

3.8 The Owner submitted the Appeal to the Secretary of State

4 STATUTORY PROVISIONS

4.1 This Deed is made pursuant to section 106 of the Planning Act section 111 of the Local Government Act 1972 section 1 of the Localism Act 2011 and to all other enabling powers to the intent that this Deed shall bind the parties and their heirs and successors assigns and persons claiming through or under them, except as expressly provided for by this Deed

4.2 Except as expressly provided by this Deed the covenants restrictions and obligations imposed on the Owner contained in this Deed are all planning obligations for the purposes of section 106 of the Planning Act and are enforceable by the Council as Local Planning Authority against the Owner

4.3 The Council's Costs are payable pursuant to section 106 (1) (d) of the Planning Act

4.4 The Owner and the Council agree the need for the planning obligations contained in this Deed both for the benefit of the Development and in the interest of proper planning of the area

4.5 Subject to clause 8 nothing in this Deed shall be construed as prohibiting limiting or affecting any right to develop any part of the Site the Bird Mitigation Land or Chalk Grassland Land in accordance with a planning permission (other than the Permission) granted by the Council or the Secretary of State after the date of this Deed and for the avoidance of doubt any operations works or development in accordance with such a planning permission shall not constitute Commencement of the Development under the terms of this Deed.

4.6 If any of the individual planning obligations set out in this Deed are found by the Secretary of State or Inspector in the Appeal decision letter not to be compliant with the Community Infrastructure Levy Regulations 2010 or that they are not a material consideration in the granting of the Permission then such obligations (or part of such obligation) shall not be enforceable and shall cease to have legal effect notwithstanding that the remaining provisions of this Deed (which for the avoidance of doubt) shall take effect and remain in effect and enforceable.

5 ENFORCEABILITY OF OBLIGATIONS

5.1 The provisions contained in the First to Seventh Schedules shall not bind nor be enforceable against the following:

5.1.1 Any Statutory Undertaker which acquires an interest in the Site the Bird Mitigation Land or Chalk Grassland Land for the purpose of undertaking its statutory functions;

5.1.2 Any individual owners, occupiers or tenants and their mortgagees or chargees of the Private Housing Units and their successors in title;

5.1.3 Any individual owners, occupiers or tenants and their mortgagees or chargees of the Affordable Housing Units and their successors in title (save subject to clauses 5.1.5 to 5.1.7 for the provisions of paragraph 4 of the Second Schedule);

5.1.4 Subject to clause 5.2 any mortgagee or chargee of the Site the Bird Mitigation Land or Chalk Grassland Land (unless and until they become a mortgagee or chargee in possession);

5.1.5 Any owner or tenant of Social Rented Housing / Affordable Rented Housing who has exercised a statutory or equivalent right to acquire or right to buy or preserved right to buy;

5.1.6 Any lessee of Shared Ownership Accommodation who has staircased their interest in that unit to 100% of the equity in that unit and either takes a transfer of the freehold reversion or directs that the freehold reversion is transferred to a third party or (in the case of a flat) acquires a 100% equity share in the lease of the flat and takes a new non-affordable housing lease of the flat or retains the existing lease

5.1.7 Any successor in title of any persons detailed in sub-paragraphs 5.1.5 and 5.1.6 or their mortgagee or chargee

5.2 None of the provisions (including the Affordable Housing provisions) in this Deed shall be binding on a mortgagee or chargee (or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever appointed) including a housing administrator (each a **Receiver**)) of the whole or any part of the Affordable Housing Unit(s) or any persons or bodies deriving title through such mortgagee or chargee or Receiver PROVIDED THAT:

(a) such mortgagee or chargee or Receiver shall first give written notice to the Council of its intention to dispose of the Affordable Housing Unit(s) and shall have used reasonable endeavours over a period of three months from the date of the written notice to complete a disposal of the Affordable Housing Unit(s) to another Registered Provider or to the Council for a consideration not less than the amount due and outstanding under the terms of the relevant security documentation including all accrued principal monies, interest and costs and expenses; and

(b) if such disposal has not completed within the three month period, the mortgagee, chargee or Receiver shall be entitled to dispose of the Affordable Housing Unit(s) free from the Affordable Housing provisions in this Deed which provisions shall determine absolutely in relation to that part of the Affordable Housing Land and/or those Affordable Housing Unit(s) only

5.3 It is agreed between the parties to this Deed that the provisions set out in the First Schedule, Second Schedule, Third Schedule, paragraph 1 of the Fourth Schedule, paragraph 1 of the Fifth Schedule and the Sixth Schedule shall bind the Site only

5.4 It is agreed between the parties to this Deed that the provisions set out in the paragraphs 2 to 5 of the Fourth Schedule shall bind the Bird Habitat Land only

5.5 It is agreed between the parties to this Deed that the provisions set out in the paragraphs 2 to 5 of the Fifth Schedule shall bind the Chalk Grassland Land only

6 COVENANTS

6.1 The Owner's Covenants

The Owner covenants with the Council:

6.1.1 To observe the restrictions and perform the obligations set out in the First Schedule, Second Schedule, Third Schedule, Fourth Schedule Fifth and Sixth Schedule

6.1.2 To serve a separate Notice on the Council in relation to and in accordance with each of the following provisions in respect of each Phase of the Development:

6.1.2.1 At least 28 days before the Commencement Date, to serve notice of the proposed occurrence of the same

6.1.2.2 Within 14 days of the Commencement of the Development to serve notice of the actual Commencement Date of the Commencement of the Development

6.1.2.3 Within 14 days of the occurrence of a Trigger Date to serve notice of the date of the relevant Trigger Date and details of the relevant event

6.1.3 To retain such records and information and within 14 days of receipt of a written request by the Council to provide the Council with such records and information as the Council may reasonably request to enable the Council to satisfy itself (acting reasonably) that the Owner is complying with all of its obligations under this Deed and the conditions attached to the Permission

6.1.4 To pay the Council's Costs on completion of this Deed

6.1.5 To pay the Monitoring Officer Costs prior to Commencement of the Development

6.2 The Council's Covenants

The Council covenants with the Owner to perform the obligations set out in the Seventh Schedule

6.3 The Lender

6.3.1 The Legal Charge Land is subject to the Legal Charge

6.3.2 The Lender agrees to the terms of this Deed and acknowledges that the Site the Bird Mitigation Land and the Chalk Grassland Land are bound by the restrictions and obligations contained in it save that the Lender shall only be bound by the obligations in this Deed when acting as mortgagee in possession of any part of the Site the Bird Mitigation Land or Chalk Grassland Land over which it has the Legal Charge but not further or otherwise

7 DECLARATIONS AND AGREEMENTS

7.1 Effective Date

The covenants contained in this Deed shall take effect on the date of this Deed other than those contained in the First Schedule paragraphs 1 to 13 and 15 the Third Schedule the Fourth Schedule the Fifth Schedule the Sixth Schedule paragraphs 1 and 6 to 13 and paragraphs 3 to 7 inclusive of the Seventh Schedule which shall take effect on the Commencement of the Development or as otherwise stated in the aforementioned Schedules

7.2 Liability for Breach

7.2.1 No person shall be liable for a breach of a provision binding the Site contained in this Deed after that person has parted with all their interest in the Site or in the part of the Site in respect of which such breach occurs but without prejudice to any subsisting breach of a provision prior to parting with such interest

7.2.2 No person shall be liable for a breach of a provision binding the Bird Habitat Land contained in this Deed after that person has parted with all their interest in the Bird Habitat Land or in the part of the Bird Habitat Land in respect of which such breach occurs but without prejudice to any subsisting breach of a provision prior to parting with such interest

7.2.3 No person shall be liable for a breach of a provision binding the Chalk Grassland Land contained in this Deed after that person has parted with all their interest in the Chalk Grassland Land or in the part of the Chalk Grassland Land in respect of which such breach occurs but without prejudice to any subsisting breach of a provision prior to parting with such interest

7.3 Revocation Modification or Expiry of the Permission

Subject to clause 8 this Deed shall determine and cease to have any further effect if the Permission is revoked or modified by the Council pursuant to the Planning Act or by any Court without the written consent of the Owner or if the Permission expires before the Commencement of the Development

7.4 Notices

7.4.1 Any Notice required under clause 6.1.2 shall be in the form attached to this Deed at Annex 1 and shall be deemed to be served if sent electronically to the address provided on the Notice or if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the Council provided on the Notice

7.4.2 Any other notice consent or approval to be given under this Deed shall be in writing and shall be deemed to be served if delivered personally or sent by pre-paid first class recorded delivery or registered post to the address of the relevant party as described in clause 1 or such other address as shall have been notified in writing to the party giving the notice consent or approval and in the case of a notice to be served on the Council addressed to the Head of Planning quoting reference MC/19/0765

7.5 **Approvals**

Where any approval consent direction action or authority is required to be given by any of the parties hereto such approval consent direction action or authority shall not be unreasonably delayed or withheld and shall only be effective if given for the purposes of this Deed

7.6 **Severance**

If any provision in this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected or impaired

7.7 **Waiver by the Council**

No waiver (whether express or implied) by the Council of any breach or default by another party in performing or observing any of the terms and conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms or conditions which they are entitled to enforce or from acting upon any subsequent breach or default in respect thereto by that party

7.8 **Registration as a Local Land Charge**

This Deed is a Local Land Charge and shall be registered as such by the Council

7.9 **Disputes Resolution**

7.9.1 Any dispute between the parties under the terms of this Deed may be referred to an expert under the Disputes Resolution Procedure

7.9.2 The decision of any expert appointed under the Disputes Resolution Procedure shall be final and binding on all of the parties to the dispute except in the case of manifest error

7.10 **Overdue Payment**

7.10.1 Payments required to be made under the terms of this Deed shall for the purposes of this clause be deemed to fall due and to be payable on the date specified for payment in the relevant clause or if no date is specified in the relevant clause then such payment shall fall due 21 days after the occurrence of the relevant Trigger Date (in either case the "**Due Date**")

7.10.2 In the event of any delay in making the payment required under this Deed interest shall be payable on the amount payable at the rate of four percent above the National Westminster Bank plc base lending rate from time to time in force from the date that the relevant payment falls due to the date of actual payment

7.11 **Indexation and VAT**

7.11.1 Any sums which become payable under this Deed on a date more than twelve months after the date of this Deed by the Owner to the

Council other than the Council's Costs and the Monitoring Officer Costs shall be subject to Indexation

7.11.2 Where a sum is subject to Indexation the actual sum due to the Council ("**Indexed Sum**") shall be calculated in accordance with the formula:

$$\text{Indexed Sum} = \text{Initial sum} \times \frac{\text{Inflation Index at Due Date}}{\text{Inflation Index at Base Date}}$$

Where:

7.11.2.1 "**Initial Sum**" is the original sum specified in this Deed; and

7.11.2.2 "**Base Date**" is the date twelve months after the date of this Deed

PROVIDED THAT where payment is not made on the Due Date the provisions of clause 7.10.2 will have effect in relation to the Indexed Sum except where the Inflation Index at the Due Date is less than the Inflation Index at the Base Date when the sum in question shall not be subject to Indexation

7.11.3 All sums due under this Deed are exclusive of VAT and the Owner shall pay to the Council in addition to any such sums any VAT properly payable in respect thereof

7.12 **No Fettering of Discretion**

Except in so far as is legally or equitably permitted nothing in this Deed shall fetter prejudice or affect the exercise of any statutory or regulatory power duty or discretion of the Council

7.13 **Variation**

No variation or modification of this Deed shall be valid unless made by Deed and executed by the parties or their respective successors

7.14 **Receipt**

The Council acknowledges receipt of the Council's Costs

7.15 **Contracts (Rights of Third Parties) Act 1999**

This Deed is not intended to confer any rights or benefit on a third party pursuant to the Contracts (Rights of Third Parties) Act 1999

7.16 **Planning Permission**

Nothing in this Deed is or amounts to or shall be construed as a planning permission or approval.

7.17 **Jurisdiction**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England

8 **Section 73 consent**

In the event any Section 73 Consent is granted after the date of this Deed:

8.1 the obligations in this Deed shall relate to and bind such Section 73 Consent; and

8.2 the definitions of Planning Application, Permission and Development shall be construed to include reference to the planning application for the Section 73 Consent, the Section 73 Consent itself and the development permitted by the Section 73 Consent respectively
PROVIDED THAT

8.3 nothing in this clause shall fetter the discretion of the Council in determining the planning application for the Section 73 Consent and the appropriate planning obligations required in connection with the determination of the same;

8.4 to the extent that any of the obligations in this Deed have already been discharged at the date that a Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent; and

8.5 the parties acknowledge that the Council has the right to insist upon the completion of a separate planning obligation by deed of agreement in connection with any Section 73 Consent if the Council (acting reasonably) considers it desirable to do so

IN WITNESS whereof this Deed has been duly executed and delivered as a Deed by the parties the day and year first before written

FIRST SCHEDULE

The Owner for himself and his successors in title covenants with the Council as follows:

1 **Nursery Contribution**

To pay the sum of NINE HUNDRED AND TWENTY FOUR THOUSAND SEVEN HUNDRED AND FIFTEEN POUNDS AND THIRTY TWO PENCE (£924,715.32) to the Council towards the provision of new nursery school facilities at Kingfisher Primary School and/or Maudene Primary School and/or Lordswood Primary School and/or St Benedicts RCP and/or Walderslade Primary School and/or within a new free school within the Site. Such contribution to be paid as follows:

i. 20% prior to the first Occupation of the first Housing Unit to be so Occupied within the Development
ii. 20% prior to the first Occupation of no more than 100 Housing Units to be so Occupied within the Development
iii. 20% prior to the first Occupation of no more than 200 Housing Units to be so Occupied within the Development
iv. The remainder 40% prior to the first Occupation of no more than 300 Housing Units to be so Occupied within the Development

2 **Primary Education Contribution**

To pay the sum of TWO MILLION TWO HUNDRED AND THIRTY EIGHT THOUSAND FOUR HUNDRED AND FIFTY FOUR POUNDS AND SIXTY ONE PENCE (£2,238,454.61) to the Council towards the provision of new primary school facilities at St Benedicts RCP and/or Lordswood Primary School and/or Kingfisher Primary School and/or Maudene Primary School and/or Walderslade Primary School and/or within a new free school within the Site. Such contribution to be paid as follows:

i. 20% prior to the first Occupation of the first Housing Unit to be so Occupied within the Development
ii. 20% prior to the first Occupation of no more than 100 Housing Units to be so Occupied within the Development
iii. 20% prior to the first Occupation of no more than 200 Housing Units to be so Occupied within the Development
iv. The remainder 40% prior to the first Occupation of no more than 300 Housing Units to be so Occupied within the Development

3 **Secondary Education Contribution**

To pay the sum of ONE MILLION EIGHT HUNDRED AND TWENTY THREE THOUSAND TWO HUNDRED AND THIRTY TWO POUNDS AND SEVENTEEN PENCE (£1,823,232.17) to the Council towards the provision of secondary school facilities by way of the expansion of Greenacre Boys School and/or Walderslade Girls School and/or a grammar school within the Medway area and/or within a new free school within the Hempstead pupil place area. Such contribution to be paid as follows:

i. 20% prior to the first Occupation of the first Housing Unit to be so Occupied within the Development
ii. 20% prior to the first Occupation of no more than 100 Housing Units to be so Occupied within the Development
iii. 20% prior to the first Occupation of no more than 200 Housing Units to be so Occupied within the Development
iv. 20% prior to the first Occupation of no more than 300 Housing Units to be so Occupied within the Development
v. The remainder sum to be paid prior to the first Occupation of no more than 400 Housing Units to be so Occupied within the Development

4 **Health Contribution**
To pay the sum of FIVE HUNDRED AND TWENTY TWO THOUSAND NINE HUNDRED AND TWENTY EIGHT POUNDS (£522,928.00) to the Council towards the improvement/expansion of primary and community health facilities at Hempstead and Capstone in order to meet the needs arising from the residents of the Development. Such contribution to be paid as follows:

i. 50% prior to the first Occupation of no more than 50% of the Housing Units to be so Occupied within the Development
ii. the remaining 50% prior to the first Occupation of no more than 75% of the Housing Units to be so Occupied within the Development

5 **Youth Provision Contribution**
To pay the sum of SIXTY FOUR THOUSAND SEVEN HUNDRED AND SIXTY POUNDS (£64,760.00) to the Council towards the provision of youth facilities more particularly towards a minibus vehicle which is converted for detached work with young people away from youth centres and supplies and instructors. Such contribution to be paid prior to the first Occupation of no more than 75% of the Housing Units to be so Occupied within the Development

6 **Open Space Contribution**
To pay the sum of TWO HUNDRED AND SEVENTY THOUSAND SIX HUNDRED AND THIRTEEN POUNDS AND FIFTY FOUR PENCE (£270,613.54) to the Council towards the provision and improvement of sports facilities and public open space facilities within 1.5 km of the Site including but not limited to Capstone Farm Country Park and outdoor sports provision in Medway including but not limited to Luton Recreation Ground. Such contribution to be paid in the following instalments:

i. 50% to be paid prior to the first Occupation of no more than 200 Housing Units to be so Occupied within the Development
ii. The remaining 50% to be paid prior to the first Occupation of no more than 400 Housing Units to be so Occupied within the Development

7 **Great Lines Heritage Park Contribution**
To pay the sum of FOURTEEN THOUSAND AND TWO HUNDRED AND FORTY TWO POUNDS AND EIGHTY TWO PENCE (£14,242.82) to the Council towards the enhancement of open space facilities at the Great Lines Heritage Park. Such contribution to be paid prior to the first Occupation of no more than 75% of the Housing Units to be so Occupied within the Development.

8 ***Public Rights of Ways Contribution***
To pay the sum of FIFTY ONE THOUSAND POUNDS (£51,000) to the Council towards towards public rights of way improvements including but not limited to the provision of signage, furniture, sight lines, information for residents and surface attention within 1.5 to 2 kilometres of the Site. Such contribution to be paid prior to first Occupation of no more than 50% of the Housing Units to be so Occupied within the Development

9 **Heritage Contribution**
To pay the sum of TWO HUNDRED AND THIRTY FOUR THOUSAND FOUR HUNDRED AND TWENTY FOUR POUNDS (£234,424.00) to the Council towards improvements to the interpretation and visitor facilities and access to heritage assets within 7.5 kilometres of the Site including but not limited to Upnor Castle and/or the Old Brook Pumping Station. Such contribution to be paid as follows:

i. 25% prior to the first Occupation of no more than 25% of the Housing Units to be so Occupied within the Development
ii. 50% prior to the first Occupation of no more than 50% of the Housing Units to be so Occupied within the Development
iii. The remaining 25% prior to the first Occupation of no more than 75% of the Housing Units so to be Occupied within the Development

10 **Public Transport Contribution**
To pay the sum of FOUR HUNDRED AND FOUR THOUSAND SEVEN HUNDRED AND SIXTY EIGHT POUNDS (£404,768) to the Council towards the provision of a new bus service to serve the Development and/or the expansion of the existing bus service, as to be agreed between the Council and the bus operator, Arriva Buses. Such contribution to be paid as follows:

i. 50% prior to the first Occupation of no more than 200 of the Housing Units to be so Occupied within the Development
ii. the remaining 50% prior to the first Occupation of no more than 50% of the Housing Units to be so Occupied within the Development

11 **Cycleway Contribution**
To pay the sum of ONE HUNDRED AND THIRTEEN THOUSAND FIVE HUNDRED POUNDS (£113,500) to the Council towards improved cycleway connectivity by way of a cycleway link on the west side of North Dane Way from the Princess Avenue North Dane Way roundabout in the south extending to the North Dane Way Capstone Road roundabout in the north the location of which is shown for identification purposes only coloured green on Plan 2. Such contribution to be paid as follows:
i. 25% prior to the first Occupation of no more than 50 Housing Units to be so Occupied within the Development
ii. 75% prior to the first Occupation of no more than 200 Housing Units to be so Occupied within the Development

12 **Community Facilities Contribution**
To pay the sum of ONE HUNDRED AND FORTY SIX THOUSAND FIVE HUNDRED AND NINETY TWO POUNDS (£146,592) to the Council towards the provision of community facilities within 3 kilometres of the Development. Such contribution to be paid as follows:

i. 25% prior to the first Occupation of no more than 25% of the Housing Units to be so Occupied within the Development
ii. 50% prior to the first Occupation of no more than 50% of the Housing Units to be so Occupied within the Development
iii. 25% prior to the first Occupation of no more than 75% of the Housing Units to be so Occupied within the Development

13 **Waste & Recycling Contribution**
To pay the sum of ONE HUNDRED AND FORTY THREE THOUSAND ONE HUNDRED AND FOUR POUNDS (£143,104.00) to the Council towards the provision of waste containment receptacles to the Development, management and improvements to waste and recycling service and local bring centres to cover the impact of additional waste created by the Development, and education and promotion for the residents of the Development, local schools, and local events. Such contribution to be paid as follows:

i. 50% prior to the first Occupation of any part of the Development
ii. the remaining 50% prior to the first Occupation of no more than 25% of the Housing Units to be so Occupied within the Development

14 **SPA (Birds) Contribution**
To pay the sum of TWO HUNDRED AND THREE THOUSAND AND SIXTY FOUR POUNDS (£203,064.00) to the Council towards the provision of migrating bird disturbance mitigation measures within the Strategic Access Management and Monitoring Strategy (SAMMS) prior to Commencement of the Development

15 **Bus Vouchers**
To provide to each household on the first Occupation of the respective Housing Unit (and not to subsequent households who may Occupy the Housing Unit) a bus voucher for FIFTY POUNDS (£50) for subsidised bus travel on bus services that serve those who live at the Development.

16 Not to cause or allow the Commencement of the Development or the Occupation of any further Housing Units within the Development exceeding the respective above mentioned triggers until the relevant instalment or payment is paid in full to the Council